

FRANTZ LAW GROUP, APLC
James P. Frantz, Esq., SBN 87492
William P. Harris III, Esq., SBN 123575
George T. Stiefel, Esq. SBN 297611
402 West Broadway, Suite 860
San Diego, CA 92101
jpf@frantzlawgroup.com
wharris@frantzlawgroup.com
gstiefel@frantzlawgroup.com
Telephone: (619) 233-5945
Facsimile: (619) 525-7672

THE EMGE FIRM, LLP
Derek Emge, SBN: 161105
501 W. Broadway, Suite 1760
San Diego, CA 92101
derek@emgelawfirm.com
Telephone: (619) 595-1400
Facsimile: (619) 595-1480
STANLEY LAW GROUP
Matthew J. Zevin, SBN: 170736
10021 Willow Creek Road, Suite
200
San Diego, California 92131
mzevin@aol.com
Telephone: (619) 235-5306
Facsimile: (815) 377-8419
Attorneys for Plaintiffs

ARNOLD & PORTER LLP
James F. Speyer (SBN 133114)
james.speyer@aporter.com
Alex Beroukhim (SBN 220722)
alex.beroukhim@aporter.com
777 South Figueroa Street, Forty-
Fourth Floor
Los Angeles, California 90017-5844
Telephone: 213.243.4000
Fax: 213.243.4199
Attorneys for Defendant
KOHL'S DEPARTMENT STORES,
INC. and KOHL'S CORPORATION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WENDY CHOWNING, et al.,

Plaintiffs,

vs.

KOHL'S DEPARTMENT STORES,
INC., et al.,

Defendants.

Case No. 2:15-cv-08673-RGK-SP

**DISCOVERY MATTER:
STIPULATED PROTECTIVE ORDER**

Courtroom: 850
Judge: Hon. R. Gary Klausner

Complaint Filed: July 21, 2015

1 WHEREAS the parties to these actions, plaintiffs Wendy Chowning and
2 Lourdes Casas, individually and on behalf of all others similarly situated, and
3 defendants Kohl's Department Stores, Inc. and Kohl's Corporation (together
4 "Kohl's"), believe that certain information that is or may be sought by discovery
5 requests or otherwise in these actions may constitute trade secrets or other
6 confidential research, development, financial or commercial information within the
7 meaning of Fed. R. Civ. P. 26(c).

8 Therefore, IT IS HEREBY STIPULATED, subject to the approval of the
9 Court, that:

10 1. This Protective Order shall govern the use and dissemination of all
11 information, documents or materials that are produced in this action and designated
12 as Confidential.

13 2. The term "document" or "documents," as used in this Protective Order,
14 shall have the same meaning as contemplated by the Federal Rules of Civil Procedure.

15 3. The term "Trade Secret," as used in this Protective Order, is defined to
16 include (a) information, documents, or materials not in the public domain that are so
17 proprietary or competitively sensitive that their public disclosure is likely to cause
18 competitive injury or (b) matters that constitute or contain trade secrets pursuant to
19 applicable state law.

20 4. The provisions of this Protective Order shall apply to the parties to this
21 action and any person and/or third party who agrees to be bound by the terms of this
22 Protective Order.

23 **Confidential Information**

24 5. Any party to this action or other person or entity, including any third
25 party, who produces or supplies information, documents or other materials used in
26 this action (hereinafter the "Designating Party" or the "Producing Party") may
27 designate as "Confidential" any such information, document or material that it
28 reasonably and in good faith believes constitutes or contains Trade Secret

1 information, personal information, information protected from disclosure by
2 contractual obligations with third-party vendors, or is otherwise protectable under
3 applicable law. The designation “Confidential” shall be made by affixing on the
4 document or material containing such information, and upon each page so designated,
5 a legend bearing the word “**CONFIDENTIAL.**”

6 6. Depositions may be designated Confidential by indicating that fact on the
7 record at the deposition or in writing within ten (10) business days of receipt of the
8 initial deposition transcript. If a Designating Party has advised the court reporter that
9 Confidential information has been disclosed during a deposition, the court reporter
10 shall include on the cover page the following indication: “**CONFIDENTIAL –**
11 **SUBJECT TO PROTECTIVE ORDER.**” Within ten (10) business days of receipt
12 of the initial deposition transcript, the Designating Party shall advise the court reporter
13 and opposing counsel of the specific pages and lines in which Confidential information
14 appears. The court reporter shall supplement the transcript to mark the specific pages
15 and lines designated as Confidential and amend the cover page to reflect that these
16 specific designations have been made. Counsel for the opposing party may have
17 immediate access to the deposition transcript, but prior to the page and line
18 designations, shall treat the entire transcript as Confidential, if so designated.

19 7. Confidential information used in this litigation may be disclosed only to:

- 20 a. This Court and its personnel;
- 21 b. Outside counsel of record and in-house counsel in this litigation
22 including staff persons employed by such counsel;
- 23 c. Any consultant, investigator or expert (collectively, “Expert”)
24 who is assisting in the preparation and trial of this litigation and the Expert’s
25 secretarial and clerical personnel, but only to the extent reasonably necessary
26 to render such assistance;
- 27 d. A deponent, but only during the course of, or in preparation for,
28 his or her deposition;

1 e. A court reporter and a videographer engaged by a party for
2 purposes of this action, provided, however, that they have access to
3 Confidential information only to the extent necessary to perform their duties;

4 f. Any mediator or arbitrator appointed by the Court or selected by
5 mutual agreement of the parties, and the mediator's or arbitrator's secretarial
6 and clerical personnel;

7 g. Outside photocopying, translation, document management,
8 litigation support, trial graphics, e-discovery, and exhibit preparation services
9 engaged by a party for purposes of this action, provided however that such
10 employees have access to Confidential information only to the extent necessary
11 to perform their duties;

12 8. If a party wishes to disclose Confidential information to any person not
13 described in paragraph 7 of this Protective Order, permission to so disclose must be
14 requested from the Designating Party in writing. If the Designating Party objects to
15 the proposed disclosure, such disclosure shall not be made unless, upon motion by the
16 party requesting such permission, this Court orders otherwise.

17 9. Prior to obtaining access to Confidential information, any person to
18 whom Confidential information may be disclosed pursuant to paragraphs 7 and 8
19 hereof, except this Court and its personnel, shall be shown and shall read a copy of
20 this Protective Order and shall agree in writing to be bound by its terms by signing a
21 copy of the Confidentiality Acknowledgment annexed hereto as Exhibit A
22 ("Confidentiality Acknowledgment A"). Counsel for the party obtaining a person's
23 signature on the Confidentiality Acknowledgment shall retain the original signed
24 acknowledgment, and, if the Court so orders, shall provide a copy of the signed
25 acknowledgment to all counsel of record.

26 10. Any papers to be filed with the Court containing information and/or
27 documents that have been designated as "Confidential" shall be filed under seal in
28 accordance with Local Rule 79-5.1. For motions, the parties shall publicly file a

1 redacted version of the motion and supporting papers.

2 **General Provisions**

3 11. Except to the extent expressly authorized in this Protective Order,
4 Confidential information shall not be used or disclosed for any purpose other than in
5 connection with any motion filed in this case, the preparation and trial of this case,
6 and/or any appeal therefrom, subject to the provisions of paragraph 20.

7 12. Any summary, compilation, notes, copy, electronic image or database
8 containing Confidential information shall be subject to the terms of the Protective
9 Order to the same extent as the material or information from which such summary,
10 compilation, notes, copy, electronic image or database is made or derived.

11 13. Each recipient of Confidential information shall maintain such
12 information in a secure, safe area and shall exercise, at a minimum, the same standard
13 of care with respect to the storage, custody, use and dissemination of such
14 information as is exercised by the recipient with respect to its own Confidential
15 information, but in no case less than reasonable care.

16 14. If Confidential information is disclosed to any person other than in a
17 manner authorized by this Order, the person responsible for such disclosure shall
18 upon the discovery of the disclosure immediately inform outside counsel of record of
19 the party whose information is disclosed, shall inform counsel of all pertinent facts
20 relating to such disclosure, and shall work in good faith with counsel to retrieve such
21 information, including making every effort to retrieve the improperly disclosed
22 Confidential information and to prevent further unauthorized disclosure on its own
23 part and unauthorized use or disclosure on the part of the recipient of the Confidential
24 information.

25 15. Any party may object to a designation by notifying the Designating Party
26 in writing of that objection. That writing also must specify the bates range
27 corresponding to the beginning and end of each document subject to objection as well
28 as the bates number of the particular page or pages of such documents that actually

1 contain the designated material to which the objection is made. The Designating Party
2 will have ten (10) calendar days following the receipt of the objection to withdraw its
3 designation or to notify the challenging party of the bases for the asserted designation.
4 The parties shall confer in good faith as to the validity of the designation within ten
5 (10) calendar days after the challenging party has received the notice of the bases for
6 the asserted designation. If the parties are unable to reach an agreement, the
7 challenging party may file and serve a motion to resolve the dispute over the
8 designation of the material, in compliance with Local Rule 37. Such a motion may be
9 filed at any time after the conference of the parties, and the Designating Party will not
10 object to such a motion being filed on an *ex parte* basis. The burden of proof with
11 respect to the propriety or correctness of the confidentiality designation shall rest upon
12 the Designating Party. If a motion is filed, information subject to dispute shall, until
13 further order of the Court, be treated consistently with its designation. With respect to
14 any material which is redesignated or ceases to be subject to the protection of this
15 Protective Order, the Designating Party shall, at its expense, provide to each party
16 which so requests additional copies thereof from which all confidentiality legends
17 affixed hereunder have been adjusted to reflect the redesignation or removal as
18 appropriate.

19 16. Inadvertent failure to designate any information pursuant to this
20 Protective Order shall not constitute a waiver of any otherwise valid claim for
21 protection, so long as such claim is asserted within fifteen (15) days of the discovery
22 of the inadvertent failure. At such time, arrangements shall be made for the return to
23 the Designating Party of all copies of the inadvertently misdesignated documents and
24 for the substitution, where appropriate, of properly labeled copies. In the case of
25 inadvertently produced privileged and/or work product documents, upon request of
26 the Producing Party, the documents together with all copies thereof and any notes
27 made therefrom shall be returned immediately to the party claiming privilege and/or
28 work product immunity. The parties do not waive any claim of privilege or work

1 product for any document as to which they presently assert a claim of privilege or
2 work product.

3 17. Nothing in this Protective Order shall be deemed to restrict in any
4 manner the use by any Designating Party of any information in its own documents
5 and materials. However, if the Designating Party publicly discloses any Confidential
6 documents then the receiving party will no longer be obligated to treat them as
7 Confidential under this protective order.

8 18. If counsel for any party receives notices of any subpoena or other
9 compulsory process commanding production of Confidential information that a party
10 has obtained under the terms of this Protective Order, counsel for such party shall, if
11 there are fewer than ten (10) days to comply, within two (2), or if more than ten (10)
12 days, at least seven (7) business days prior to the due date of compliance, notify the
13 Designating Party in writing, and shall not produce the Confidential information, until
14 the Designating Party has had reasonable time to take appropriate steps to protect the
15 material. It shall be the responsibility of the Designating Party to obtain relief from the
16 subpoena or order prior to the due date of compliance, and, to give the Designating
17 Party an opportunity to obtain such relief, the party from whom such information is
18 sought shall not make the disclosure before the actual due date of compliance set forth
19 in the subpoena or order. Nothing in this Order shall be construed as authorizing a
20 party to disobey a lawful subpoena or order issued in another action.

21 19. This Protective Order shall not prevent any of the parties from moving
22 this Court for an order that Confidential information may be disclosed other than in
23 accordance with this Protective Order. This Protective Order is without prejudice to
24 the right of any party to seek modification of it from the Court. It shall remain in
25 effect until such time as it is modified, amended or rescinded by the Court. This
26 Protective Order does not affect any party's rights to object to discovery on any
27 grounds other than an objection based solely on the ground that the information
28 sought is confidential in nature.

1 20. This Protective Order is not intended to govern the use of Confidential
2 information at any trial of this action. Questions of the protection of Confidential
3 information during trial will be presented to the Court and the Designating Party prior
4 to or during trial as each party deems appropriate.

5 21. This Court shall have continuing jurisdiction to modify, enforce, interpret
6 or rescind this Protective Order, notwithstanding the termination of this action.

7 22. Within sixty (60) days after the conclusion of this action, including the
8 exhaustion of all appeals, counsel for all parties shall return all Confidential
9 information produced in this litigation (other than exhibits at the official court of
10 record) to the Designating Party or shall destroy such information at their own cost.
11 However, documents or materials that contain Confidential information of a
12 Designating Party and the work product of the party in possession of the documents
13 or materials need not be returned to the Designating Party or destroyed. Counsel for
14 any party or third party receiving Confidential information shall make written
15 certification of compliance with this provision and shall deliver the same to counsel
16 for each Designating Party within one hundred twenty (120) days after the conclusion
17 of this action, including the exhaustion of all appeals. The attorneys of record for
18 each party shall be entitled to retain all pleadings, motion papers, court filings,
19 deposition transcripts (and exhibits), legal memoranda, correspondence, notes, and
20 work product.

1 Dated: December 23, 2015

FRANTZ LAW GROUP, APLC

2
3 By: /s/ George T. Stiefel

4 James P. Frantz
5 William P. Harris III
6 George T. Stiefel
7 Attorneys for Plaintiffs
8 WENDY CHOWNING and
9 LOURDES CASAS

10 Dated: December 23, 2015

THE EMGE FIRM, LLP

11 By: /s/ Derek Emge

12 Derek Emge
13 Attorneys for Plaintiffs
14 WENDY CHOWNING and
15 LOURDES CASAS

16 Dated: December 23, 2015

STANLEY LAW GROUP

17 By: /s/ Matthew J. Zevin

18 Matthew J. Zevin
19 Attorneys for Plaintiffs
20 WENDY CHOWNING and
21 LOURDES CASAS

1 Dated: December 23, 2015

ARNOLD & PORTER LLP

3 By: /s/ James F. Speyer

4 James F. Speyer

Alex Beroukhim

5 Attorneys for Defendants

6 KOHL'S DEPARTMENT STORES,
7 INC. and KOHL'S CORPORATION

8 Local Rule 5-4.3.4 Attestation:

9 I, James F. Speyer, attest that the above-signed counsel, on behalf of
10 plaintiffs, concur in the content of this filing and have authorized this filing.

11
12 **SO ORDERED** this 7th day of January, 2016.

13 

14 _____
15 The Honorable Sheri Pym
16 Magistrate Judge

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James P. Frantz, Esq., SBN 87492
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402 West Broadway, Suite 860
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Telephone: (619) 233-5945
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10021 Willow Creek Road, Suite
200
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Facsimile: (815) 377-8419
Attorneys for Plaintiffs

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James F. Speyer (SBN 133114)
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alex.beroukhim@aporter.com
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Plaintiff,

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CASE NO. 2:15-cv-08673-RGK-SP

**CONFIDENTIALITY
ACKNOWLEDGMENT A**

Courtroom: 850

Judge: Hon. R. Gary Klausner

Complaint Filed: July 21, 2015

1 I, _____, being duly sworn on oath, state
2 the following:

3 1. I have read and understand the Protective Order to which this Exhibit A
4 is annexed and I attest to my understanding that access to information designated
5 Confidential may be provided to me and that such access is pursuant to the terms and
6 conditions and restrictions of the Protective Order. I agree to be bound by the terms
7 of the Protective Order. I hereby submit to the jurisdiction of this Court for the
8 purpose of enforcement of this Confidentiality Acknowledgment and the Protective
9 Order.

10 2. I shall not use or disclose to others, except in accordance with the
11 Protective Order, any Confidential information. I also shall return all Confidential
12 information provided to me in this litigation to case counsel who provided such
13 information to me within sixty (60) days after the conclusion of this action, including
14 the exhaustion of all appeals. If I fail to abide by the terms of this Confidentiality
15 Acknowledgment or the Protective Order, I understand that I may be subject to
16 sanctions under the contempt power of this Court.

17 Dated:

18 _____
19 Signature

20 _____
21 Printed Name

22 _____
23 Address

24 _____
25 Individual or Entity Represented
26
27
28